



Testimony of Karla Walter

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*Written testimony regarding HB 6594, AN ACT CONCERNING NON-COMPETE AGREEMENTS*

To the members of the Labor and Public Employees Committee:

Thank you for the opportunity to submit testimony on House Bill 6594, a bill to protect Connecticut workers from exploitative non-compete agreements and encourage entrepreneurship.

My name is Karla Walter. I am the senior director of the American Worker Project at the Center for American Progress Action Fund, a progressive education and advocacy organization dedicated to improving the lives of Americans. I have conducted extensive research and developed recommendations on how state oversight of non-compete agreements can boost workers' pay and freedom in the economy.<sup>1</sup> Last session, I provided supportive testimony on Connecticut House Bill 5249, a substantially similar bill to prevent the use of exploitative noncompete agreements.<sup>2</sup> In my written testimony, I will explain how reforming the state's non-compete laws can protect workers from unfair non-compete agreements; spur economic growth and entrepreneurship; and build on emerging state-level reforms to establish Connecticut as a national leader.

### *Strengthen protections for workers from exploitative non-compete agreements*

From check-cashing clerks to physicians to engineers, corporations increasingly subject workers across income and educational attainment levels to non-compete agreements that require them to agree not to become an employee of a competitor or start a competing company for a specific period of time after leaving a firm. While corporations have long required CEOs and top talent to sign such agreements, today more than 38 percent of workers across all educational levels—and 35 percent of those without a college degree—report signing a noncompete agreement at some point in their lives.<sup>3</sup>

Workers often receive little advanced warning of the requirement and usually get no payment during the period they are prevented from seeking employment with competitors. Even if they suspect that an agreement is illegal, workers have little recourse since legal remedies typically do not require employers to pay penalties or back pay to aggrieved workers.<sup>4</sup>

The prevalence of these agreements harms all workers. According to a 2016 report from the U.S. Department of Treasury, living in a state with strict enforcement of noncompete contracts compared to one with the most lenient enforcement, is associated with a 5 percent reduction in pay for a typical 25-year-old worker. This penalty grows to 10 percent for the typical 50-year-old worker.<sup>5</sup>

Working Americans urgently need more high-quality jobs. While the tight labor market is pushing employers to increase wages across the private sector, these temporary pressures are not enough to overcome decades of wage stagnation and worsening work conditions. In 2021, the Economic Policy Institute found that while net productivity grew by nearly 62 percent over the past four decades, average hourly pay for the typical worker increased by just 17.5 percent.<sup>6</sup>

Without action, Connecticut workers will be less able to seek better opportunities and, even when they do, corporations will have more power to negotiate one-sided terms of employment. Indeed, research confirms that these agreements reduce job mobility. For example, job mobility in Michigan fell by 8 percent after the state started allowing the enforcement of noncompete agreements.<sup>7</sup>

Banning these agreements among employees earning less than 3 times the state minimum wage—or approximately \$90,000 per year for a fulltime, year-round worker once the state minimum wage reaches \$15 per hour later this year-- will help to boost job mobility and wages. Also, ensuring that higher wage workers receive early notice of any non-compete requirement and monetary compensation for any agreement that extends longer than one year will strengthen their bargaining power.

### *Support economic growth and entrepreneurship in the Connecticut*

Allowing workers to move easily between firms can help stimulate the economy as a whole by fostering innovation through information-sharing; entrepreneurship as workers leave jobs to start new companies; and even regional industry development—since firms can co-locate to share local talent.

Conversely, the negative consequences of limiting job mobility through strict and wideranging enforcement of noncompete agreements can spread throughout a state's economy. Studies have found that stricter enforcement of noncompete agreements reduces the number of new firms entering a state, lowers firm survival rates, reduces startup size, and delays entrepreneurship among women.<sup>8</sup> Moreover, a 2011 study found that venture capital funding had stronger positive effects on the number of patents licensed and firm startups in states with weaker enforcement of noncompete agreements.<sup>9</sup> Strict enforcement of noncompete contracts can deplete local talent pools by requiring skilled workers to leave their industry of expertise or relocate out of state. One study of engineers found that about one-third of workers who signed noncompete agreements left their industry when they changed jobs.<sup>10</sup>

Banning signature of non-compete agreements among independent contractors earning less than 5 times the state minimum wage would specifically addresses the impact of these contracts on small business owners.

### *Establish Connecticut as a national leader*

Increasingly, lawmakers are advancing reforms to protect low and middle wage workers from restrictive employment contracts that keep them locked in jobs they do not want but cannot leave. Maine, Massachusetts, Washington, and Virginia have enacted laws in recent years to protect workers from exploitative noncompete agreements.<sup>11</sup>

Policymakers in Connecticut can ensure that protections do not erode over time by indexing coverage thresholds to employment costs and banning the signature of a non-competes among these workers rather than simply prohibiting their enforcement, which can also have a chilling effect on job mobility.<sup>12</sup>

By strengthening noncompete protections in the state, Connecticut lawmakers could boost workers' pay and job mobility; jump start economic growth by supporting local entrepreneurs; and serve as a national leader for all states.

## Endnotes

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- <sup>1</sup> See: Karla Walter, “The Freedom to Leave: Curbing Noncompete Agreements to Protect Workers and Support Entrepreneurship” (Washington: Center for American Progress, 2019) available at <https://www.americanprogress.org/issues/economy/reports/2019/01/09/464831/the-freedom-to-leave/>; Karla Walter, “States Must Act to Protect Workers from Exploitative Noncompete and No-Poach Agreements: A Primer,” Center for American Progress, April 2, 2019, available at <https://www.americanprogress.org/issues/economy/news/2019/04/02/467955/states-must-act-protect-workers-exploitative-noncompete-no-poach-agreements/>.
- <sup>2</sup> See Connecticut General Assembly, Raised Bill No. 5249, available at <https://www.cga.ct.gov/2022/TOB/H/PDF/2022HB-05249-R00-HB.PDF>.
- <sup>3</sup> Evan Starr, J.J. Prescott, and Norman Bishara, “Noncompetes in the U.S. Labor Force,” *Journal of Law and Economics* (Ann Arbor, MI: University of Michigan, 2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2625714](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625714).
- <sup>4</sup> Matt Marx, “Reforming Non-Competes to Support Workers” (Washington: Hamilton Project, 2018), available at [http://www.hamiltonproject.org/assets/files/reforming\\_noncompetes\\_support\\_workers\\_marx\\_policy\\_proposal.pdf](http://www.hamiltonproject.org/assets/files/reforming_noncompetes_support_workers_marx_policy_proposal.pdf).
- <sup>5</sup> Office of Economic Policy, “Non-compete Contracts: Economic Effects and Policy Implications” (Washington: U.S. Department of the Treasury, 2016), available at <https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf>.
- <sup>6</sup> Economic Policy Institute, “The Productivity-Pay Gap,” (Washington, DC: 2021) available at <https://www.epi.org/productivity-pay-gap/>.
- <sup>7</sup> Matt Marx, Deborah Strumsky, and Lee Fleming, “Mobility, Skills, and the Michigan Non-Compete Experiment,” *Management Science* 55 (6) (2009), available at <https://pubsonline.informs.org/doi/abs/10.1287/mnsc.1080.0985>. See also Matt Marx and Lee Fleming, “Non-compete Agreements: Barriers to Entry ... and Exit?” in Josh Lerner and Scott Stern, ed(s), *Innovation Policy and the Economy Volume 12* (Chicago, IL: University of Chicago Press, 2012).
- <sup>8</sup> Jessica Jeffers, “The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship,” (Chicago, IL: University of Chicago, 2019) available at <https://ssrn.com/abstract=3040393>; Evan Starr, Natarajan Balasubramanian, and Mariko Sakakibara, “Screening Spinouts? How Noncompete Enforceability Affects the Creation, Growth, and Survival of New Firms,” *Management Science* 64 (2) (2017): 552–572, available at <https://pubsonline.informs.org/doi/abs/10.1287/mnsc.2016.2614>; Evan Starr, “The Use, Abuse, and Enforceability of Non-Compete and No-Poach Agreements,” (Washington: Economic Innovation Group, 2019) available at <https://eig.org/wp-content/uploads/2019/02/Non-Competes-2.20.19.pdf>; Matt Marx, “Employee Non-compete Agreements, Gender, and Entrepreneurship,” (Boston, MA: Boston University, 2020), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3173831](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3173831).
- <sup>9</sup> Sampsa Samila and Olav Sorenson, “Non-Compete Covenants: Incentives to Innovate or Impediments to Growth,” *Management Science* 57 (3) (2011): 425–438, available at <https://doi.org/10.1287/mnsc.1100.1280>.
- <sup>10</sup> Matt Marx, “The Firm Strikes Back: Non-compete Agreements and the Mobility of Technical Professionals,” *American Sociological Review* 76 (5) (2011): 695–712, available at <https://journals.sagepub.com/doi/abs/10.1177/0003122411414822?journalCode=asra>.
- <sup>11</sup> Washington Chapter 49.62 RCW, available at <https://app.leg.wa.gov/RCW/default.aspx?cite=49.62>; Maine Revised Statutes Title 26, Section 599-A, available at <http://legislature.maine.gov/statutes/26/title26sec599-A.html>; Virginia Section 40.1-28.7:7, available at <https://legiscan.com/VA/text/SB480/2020>; Massachusetts Bill S. 2625 available at <https://malegislature.gov/Bills/190/S2625/BillHistory?pageNumber=11>. Note that while some of these laws are more conservative in their coverage, the Washington State model has even higher income thresholds for both employees and independent contractors.
- <sup>12</sup> Matt Marx and Ryan Nunn, “The Chilling Effect of Non-Compete Agreements,” The Hamilton Project, May 20, 2018, available at [http://www.hamiltonproject.org/blog/the\\_chilling\\_effect\\_of\\_non\\_compete\\_agreements](http://www.hamiltonproject.org/blog/the_chilling_effect_of_non_compete_agreements).